

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5151 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

FAKRUDDIN GULAMHUSEN

Versus

MAGANBHAI SOMABHAI

Appearance:

MR PJ VYAS for Petitioner
MRS KETTY A MEHTA for Respondent No. 1
NOTICE SERVED for Respondent No. 2
Ms.Manisha Lavkumar, AGP for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 06/10/2000

ORAL JUDGEMENT

By this petition under Article 227, the order of the Collector, Surat dated 6.12.1989 (Annexure A) has been called in question whereby the auction of agricultural lands in favour of the petitioner, belonging

to the respondent no.1 for recovery of dues of the Cooperative Society (respondent no.3) has been set aside. The impugned order of the Collector has been confirmed by the Special Secretary, Revenue Department of the State of Gujarat by its order of January, 1991.

2. The Learned Counsel appearing for the petitioner as the auction-purchaser has urged only 2 grounds. Firstly, it is stated that the auction which was confirmed in the year 1979-80 could not have been set aside in exercise of suo moto powers of revision under Section 211 of the Bombay Land Revenue Code by order made in the year 1983. The second ground urged is that suo moto power of revision cannot be exercised after the auction sale is confirmed, sale certificate is issued and the revenue entries are correspondingly made.

3. Ld. Counsel appearing for the respondent no.1 who is the original owner of the land, on the earlier date, was granted time to ascertain as to whether the land continues to be in possession of the auction purchaser or in possession of the respondent no.1. The information that is given to the Court is that the respondent no.1 still continues to be in actual possession of the land.

4. It is true that 10 years period is too long for invoking the suo moto revision powers but as in this case, the petitioner as auction purchaser was never placed in possession of the agricultural lands in question it would not be just at this distance of time to upset the revisional order of the Collector which has been confirmed by the State Government. The Collector in the impugned order for setting aside of the auction sale has directed return of the auction money to the petitioner. On setting aside of auction sale the petitioner is entitled to the return of the auction money.

5. The Cooperative Society, respondent no.3 for whose dues the proceedings of auction were taken up was noticed on this application but despite service nobody represents the society. It would be open to the society to initiate fresh proceedings of recovery of dues, if any, against the respondent no.1.

6. Consequently, the petition fails and is hereby dismissed but in the circumstances with no orders as to costs. It is however directed that in terms of the order of the Collector, which is confirmed by the Secretary of the State Government, if the auction money is not already

refunded it be refunded to the petitioner by the respondents within a period of 3 months failing which it shall carry interest at the rate of 12% p.a. Rule is discharged. Order of Interim relief is vacated.

(D.M.Dharmadhikari, CJ)

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